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6. Heavy fines are provided for violation of the statute, the limit being 20,000 francs.

The enactment of this statute, which seems probable, will prove highly inconvenient to many American corporations doing business in France; but its provisions can hardly be regarded as unreasonable in view of the interests to be protected, and the difficulty, at present existing, in getting precise and authentic information in any country as to the corporations of another. The tendency of the times is to turn on the electric light, wherever and whenever corporate management is brought in question.

By way of compensation, all foreign corporations legally existing in their own country are hereafter to have the right to do ordinary business in France, and to sue in court. This was conceded to British companies in 1862, by a special convention, but up to this time has not been a general right. S. E. B.

RES JUDICATA AND ESTOPPEL.

There exists among the authorities no little conflict as to whether the doctrine of *res judicata* has any actual foundation in that of estoppel. This question seems to be, in the last analysis, the line of demarcation between the position taken in Justice Day's opinion in the case of *Deposit Bank of Frankfort v. Board of Councilmen*, 24 Sup. Ct. 154, and that of Chief Justice Fuller's dissenting opinion, in which Justices Brewer, Brown and Peckham concur. In this case city officers were attempting to collect taxes from a bank. The Hewitt law in Kentucky had been declared by the Franklin County Circuit Court to constitute an irrevocable contract exempting the bank from taxation. Then, in an action for the recovery of taxes of other years than those involved in the present case, between the same parties, a Federal court had declared that the question was *res judicata*, and that no taxes for any year could be collected. The original Franklin Circuit Court decision was later reversed by the highest court of the State, and the view that there was an irrevocable contract exemption repudiated by the Federal Supreme Court.

Justice Day's opinion holds that the finding of the Franklin Circuit Court was conclusive evidence for the Federal court, and hence that the decision of the Federal court was a reaffirmation of that of the circuit court *in toto*, including the holding that the Hewitt law was an irrevocable contract. As a logical consequence no taxes whatever could be collected, in spite of the fact that it is the settled law of Kentucky that an adjudication of taxes for one year cannot be pleaded as an estoppel in suits involving taxes of other years. The dissenting opinion maintains that the decision of the Federal court was based upon the doctrine of estoppel; that the board of councilmen was held to be estopped to deny the existence of the irrevocable contract, and that nothing further was involved. Hence, it is argued, the decree could not give to the circuit court decision

any wider scope than the law of the State allowed, and the estoppel would not extend to taxes other than those involved in the adjudicated case. If, then, the doctrine of *res judicata* is not founded upon that of estoppel, the minority position loses its force.

Blackstone defines estoppel as "where a man hath done some act or executed some deed which estops or precludes him from averring anything to the contrary," 3 *Bl., Comm.*, 308, a definition hardly broad enough to include "estoppel by judgment." This definition is followed by *Stephen, Pl.*, 239, but *Bouvier, Law. Dict.*, 694, and *Bispham, Eq.* (6th ed.), 398, quoting Bigelow, add words to include the judgment of a court. Several courts have criticized the use of the phrase "estoppel by judgment" as confusing and erroneous, maintaining that estoppel must be by the act of the parties, and that a judgment can hardly be said to be the act of the parties, especially when rendered against the party instigating the litigation. *Offutt v. John*, 8 Mo. 120; *Kilheffer v. Kerr*, 17 S. & R. (Pa.) 319, 325; *Ball v. Trenholm*, 45 Fed. 588. In *Sargent v. New Haven Steamboat Co.*, 65 Conn. 116, the court says, "The rule of *res judicata* does not rest wholly on the narrow ground of a technical estoppel, nor on the presumption that the former judgment was right and just, but on the broad ground of public policy, that requires a limit to litigation; a curb to the litigiousness of the obstinate litigant. Like the statute of limitations, it is a rule of rest."

The doctrine of *res judicata* was first formulated in the familiar *Duchess of Kingston's Case*, 20 How. St. Tr. 538, in terms which would not necessarily involve the introduction of the principle of estoppel. "The judgment of a court of concurrent jurisdiction directly upon the point, is as a plea, a bar, or as evidence, conclusive between the parties, upon the same matter, directly in question in another court." That *res judicata* is an estoppel is asserted in *Cheney v. Selman*, 71 Ga. 384, and by Chief Justice Shaw in *Sawyer v. Woodbury*, 7 Gray (Mass.) 499. A typical definition of estoppel to include *res judicata* is found in *Burlen v. Shannon*, 99 Mass. 200, where the court said, "Estoppel is an admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted or established to be afterwards drawn in question between the same parties or their privies." Sometimes the distinction has been taken that the judgment is a bar to further proceedings upon the same cause of action, but that the adjudication upon a particular fact or matter is an estoppel. *Burt v. Sternburgh*, 4 Cow. (N. Y.) 562; *Caperton v. Schmidt*, 26 Cal. 479.

We have here, then, a clean-cut conflict of authority, and it would be a difficult task to determine on which side the weight lay. It is to be regretted that the Supreme Court did not expressly declare their view of this fundamental question.